

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**JUL 16 2010**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

MATHEW S.,	)	2 CA-JV 2010-0015
	)	DEPARTMENT B
	)	
Appellant,	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
v.	)	Rule 28, Rules of Civil
	)	Appellate Procedure
ARIZONA DEPARTMENT OF ECONOMIC	)	
SECURITY and MURPHY S.,	)	
	)	
	)	
Appellees.	)	
	)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. J192019 and S192277

Honorable Hector E. Campoy, Judge

AFFIRMED

Jacqueline Rohr

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Jane A. Butler

Tucson  
Attorneys for Appellee Arizona  
Department of Economic Security

K E L L Y, Judge.

¶1 Mathew S., father of Murphy S., born in June 2009, challenges the juvenile court's order terminating his parental rights on the ground of abuse and neglect, pursuant

to A.R.S. § 8-533(B)(2).<sup>1</sup> Mathew challenges the sufficiency of the evidence to support the order. We affirm for the reasons stated below.

¶2 The Arizona Department of Economic Security (ADES) filed a petition to terminate Mathew’s parental rights in October 2009. ADES was required to prove the elements of § 8-533(B)(2) with clear and convincing evidence and establish by a preponderance of the evidence that termination of Mathew’s parental rights was in the child’s best interest. *See Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 1, 41, 110 P.3d 1013, 1014, 1022 (2005). On appeal, we view the evidence and all reasonable inferences in the light most favorable to upholding the juvenile court’s order. *See Manuel M. v. Ariz. Dep’t of Econ. Sec.*, 218 Ariz. 205, ¶ 2, 181 P.3d 1126, 1128 (App. 2008). We will not reweigh the evidence on appeal because, as the trier of fact, the juvenile court “is in the best position to weigh the evidence, observe the parties, judge the credibility of witnesses, and resolve disputed facts.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 4, 100 P.3d 943, 945 (App. 2004). If there is reasonable evidence to support the factual findings upon which the court has based its order, we will affirm. *Jesus M. v. Ariz. Dep’t of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002).

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<sup>1</sup>The mother’s rights were terminated as well. She appealed separately and we affirmed the juvenile court’s order. *Jessica C. v. Ariz. Dep’t of Econ. Sec.*, No. 2 CA-JV 2010-0019 (memorandum decision filed June 24, 2010). In his opening brief, Mathew acknowledges Jessica’s appeal and “join[s] into the arguments expressed and presented by the mother.” He cites no authority permitting an appellant to join in arguments made by a party in a separate appeal, and we are aware of no such authority. Indeed, Rule 13(f), Ariz. R. Civ. App. P., suggests otherwise. We will not consider the arguments Jessica made, only those that Mathew asserts in his opening and reply briefs. In any event, we rejected those arguments and affirmed the termination of Jessica’s parental rights.

¶3 ADES filed the petition to terminate Mathew’s and Jessica’s parental rights soon after it had filed the dependency petition. Mathew concedes that Murphy, who was then two and a half months old, was admitted to a Tucson hospital on August 28 with life-threatening injuries, including a skull fracture, bilateral subdural hematomas, and retinal hemorrhaging. ADES alleged in the petition for termination that one or both parents had neglected or willfully abused the child by inflicting the injuries or had failed to protect Murphy from such abuse, grounds for termination pursuant to § 8-533(B)(2). “Neglect” is defined as “the inability or unwillingness of a parent . . . to provide [a] child with supervision . . . or medical care if that inability or unwillingness causes unreasonable risk of harm to the child’s health or welfare.” A.R.S. § 8-201(22). “Abuse” is defined as “the infliction or allowing of physical injury, impairment of bodily function or disfigurement . . . caused by the acts or omissions of an individual having care, custody and control of a child.” § 8-201(2). The definition of serious physical injury includes an injury diagnosed by a medical doctor that creates a reasonable risk of death, serious or permanent disfigurement, significant physical pain, or serious impairment of health. § 8-201(30).

¶4 In February 2010, after a consolidated dependency<sup>2</sup> and severance hearing, the juvenile court entered a thorough minute entry that addressed the allegations of both the dependency petition and the petition to terminate both parents’ rights. The court’s factual findings included that the parents “were the sole caretakers of Murphy during the

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<sup>2</sup>ADES had filed a dependency petition shortly after Murphy was taken to the hospital on August 28; the child was not permitted to go home with the parents and was later placed with the paternal grandmother.

vast majority of the time” from his discharge from one Tucson hospital on August 24, 2009, until his admission to a second hospital four days later. Murphy’s initial hospitalization was for what was believed to have been a fractured leg but was diagnosed as a urinary tract infection. The court further found that “[n]either parent took adequate precautions to ensure the safety of the child relative to the other parent or relative to the two caregivers (who provided no more than 9 hours of care between August 25, 2009 through August 28, 2009).” The court added that one of the caregivers, the maternal grandmother, “has a history of instability and inability to care for her own children.” The court found that neither parent had asked the other two caregivers about Murphy’s injuries or how they had occurred. It also found that a nurse had overheard Jessica crying as she asked the person to whom she was speaking on the telephone about obtaining legal counsel and then commenting she knew what had happened.

¶5 The juvenile court found “troubling” Mathew’s explanation for why he had been unable to reach emergency services on his cellular telephone. Mathew testified he had tried to call 9-1-1 twenty times using the voice-activated dialing feature on his telephone, but it would not respond to his voice commands. The court concluded the parents had abused or neglected Murphy and termination of their rights was in the child’s best interests.

¶6 Mathew contends the evidence was not clear and convincing that he had abused or neglected Murphy. First, he asserts there was insufficient evidence to support the allegation that a criminal investigation of Mathew and Jessica was ongoing. But,

whether true or not, that fact is not material. Criminal proceedings and parental termination proceedings are distinct and exist independently.

¶7 Mathew also points to evidence that there were reasonable explanations for some of the things the juvenile court had found troubling. He notes there was evidence that he and Jessica had responded appropriately once they realized the seriousness of Murphy's condition. He relies, too, on evidence that they provided an appropriate home for their infant child. Additionally, Mathew asserts there was evidence that he and Jessica were not the only caretakers during the relevant period preceding Murphy's August 28 hospitalization.

¶8 Mathew is essentially asking this court to reweigh the evidence and to resolve some of the conflicts that existed in the evidence. But again, it was for the juvenile court to weigh the evidence and resolve any conflicts based on its assessment of witnesses' credibility. Similarly, it was for the juvenile court, not this court, to determine what inferences the evidence permitted. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. The evidence established, and Mathew does not dispute, that Murphy had sustained serious, permanent, life-threatening injuries and had experienced pain as a result of nonaccidental trauma. The parents did not explain to medical personnel, the detective who interviewed them at the hospital, or the Child Protective Services case worker how Murphy had been injured, other than telling the detective and the case worker that he had bumped his head on the wall while Mathew was holding him. Mathew testified he had not asked either of the other caretakers or Jessica if they had injured Murphy. The court made clear it found this troubling because, given the severity of Murphy's injuries, it was

unlikely a parent would not ask such a question. From its comments at the hearing and in its order, the court factored this into its assessment of the evidence.

¶9 We also reject Mathew’s complaint regarding the weight the juvenile court appears to have given to Jessica’s telephone conversation with Mathew’s stepmother. Mathew minimizes the conversation and suggests the court drew incorrect inferences from it. The note that the nurse had made in the medical records was admitted to establish what the nurse had written, but she did not testify at the hearing. Jessica testified about that conversation and attempted to persuade the court her statements had been misconstrued and taken out of context. But the court was not required to believe Jessica and did not abuse its discretion by rejecting her explanation and drawing inculpatory inferences instead. In addition, the court did not err in finding the evidence of abuse or neglect was clear and convincing, given the testimony and reports of pediatric neurologist Dr. Dinesh Talwar and pediatric intensive care specialist Dr. Katri Typpo, which the court summarized in its order, as well as the testimony of other witnesses, including Jessica and Mathew.<sup>3</sup>

¶10 Mathew also challenges the juvenile court’s finding that termination of his parental rights was in Murphy’s best interest. The case worker explained she would have concerns for Murphy’s safety if he were ever returned to either of his parents. She noted that Murphy is and will continue to be seriously disabled and will require special medical and developmental care. And, she testified he is bonded with his grandmother, who is

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<sup>3</sup>Mathew himself suggested he has an anger problem when he testified he had become so angry during a fight with Jessica on one occasion that he threw his drumsticks against the wall and “made a big mess.”

able to provide him with that care. It appears from the record before us that, if approved, the grandmother is willing to be a long term placement for him.

¶11 Although we have noted relevant portions of the juvenile court’s ruling in addressing Mathew’s arguments, no purpose would be served by restating the court’s ruling in its entirety. Instead, we conclude there is reasonable evidence to support the court’s findings of fact and we find no error of law; we adopt the court’s ruling and affirm the termination of Mathew’s parental rights to Murphy. *See Jesus M.*, 203 Ariz. 278, ¶ 16, 53 P.3d at 207-08, *citing State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge